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Gen. II—37—100,000—23-6-48.

Revenue (1948) Department

1948 SERIES.

G.O. No. 1025

Dated 1-5-48

Despatch Abstract

Tax - The Madras General Sales Tax Act. 1939 - Law officers - Standing Counsel for Commercial Taxes/Tax Acts - Employment - Proposal - Papers # Recorded.

REVENUE DEPARTMENT
Subject.

Madras General Sales Tax Act, 1939 - Law Officers - Standing counsel for Commercial Tax Acts - Employment - Proposal - Submitted.

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the Board before assessing or passing orders on appeals.

6. The services of the legal adviser can be utilised very profitably when compiling a manual for the use of the Department or whenever it is decided to amend the Acts or Rules.

7. The Services of the Government Pleader cannot be utilised for the above purposes because for full legal assistance a whole-time adviser is necessary, and because the adviser should be an expert in mercantile law, as the Act is bound up with other Acts - e.g. the Indian Sales of Goods Act, the Indian Contracts Act, etc.

8. As regards the qualifications, recruitment, pay, duties, etc of the post, the Board has framed certain draft rules -- on the analogy of the rules for other law officers in the City - which are found in the Appendix to this letter.

9. The Board requests that the Government may approve of the rules as found in the Appendix, and take early steps to appoint a legal adviser.

x x x x x
For Addl. Joint Secretary.

To

The Secretary to Government, Revenue Department.

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APPENDIX.

I. Qualifications:- The legal adviser for Commercial Taxes should

(a) be a Barrister or Advocate of the High Court with at least 10 years experience in Company or Mercantile Law.

(b) not have attained the age of 60.

(c) be domiciled in India.

II. Appointment:- The appointment will be made by Government in consultation with the Board and the Advocate-General. The appointment will be terminable on six months' notice by either side.

III. Salary and emoluments:- (a) the legal adviser shall draw a salary of Rs. 275/- per mensem. (This is the salary of the Government Pleader).

(b) for conducting or defending civil or criminal suits or other proceedings before any court or Tribunal in the City or within a radius of 20 miles -- the regulation fee of Rs. 30/- whichever is more.

Proviso (1) Where he appears in a number of connected cases, whe the result is virtually determined by the issue of a single case, he shall be paid (i) the regulation fee due for the case in which the highest fee is payable or Rs. 30/-, whichever is more; and (ii) a fee of Rs. 30/- for each of the remaining cases, irrespective of the regulation fee.

Proviso (2). In cases where the proceedings are brief and his appearance involves no material amount of work or where his appearance is of a purely formal nature, he may be paid fees at such lower rates as may be fixed by Government.

Proviso (3). In exceptionally difficult or important cases he may be paid such fees as may be fixed by Government.

(c)(i) when directed to appear on behalf of the Government in mufassal courts beyond a radius of 20 miles from Madras, he will be paid Rs. 175/- per diem for the period of his necessary absence from Madras. No fee will be paid for Sundays or other holidays.

(ii) for all journeys performed under the orders of Government he shall draw travelling allowance at the rates admissible to officers of Grade I in Annexure I to the Madras Travelling Allowances Rules. He shall not be entitled to any daily allowance except in lieu of mileage or railway fare.

(d) He shall not be paid any fee for giving legal opinions or advice.

IV. Duties:- The legal adviser for Commercial taxes shall be regarded as the Assistant to the Advocate-General in all matters relating to commercial taxes and connected Acts arising in the Province. In cases of difficulty he may apply to the Advocate-General and in turn shall assist him whenever required.

(a) He shall advise the Government, Board and all District Officers (who shall address him through the Board) on all questions of law, arising in suits, suit notices, appeals, criminal cases and criminal appeals, assessments and appeals and revision petitions arising therefrom; Acts and Rules and their drafting or amendments; rulings on general questions and their compilation in the form of a manual or standing orders - relating to the Madras General Sales Tax Act, the Madras Entertainments Tax Act and Madras S.M.S.T.Act and other connected Acts and rules.

(b) He shall conduct and defend all civil suits, appeals and revision petitions filed or heard in Madras. or within a radius of 20 miles, on behalf of Government.

(c) He shall also appear in such matters in the muffassal when specially deputed by the Government.

d) He shall also conduct or defend prosecutions when specially deputed by Government whether in Madras or in the mufassil and shall appear in all Criminal Revision Petitions before the High Court.

(e) He shall advise, when called upon, in the matter of conducting or defending prosecutions and civil matters in which he himself does not appear.

(f) His other duties shall be similar to those of the Government Pleader, Madras in civil matters, and to those of the Crown Prosecutor, Madras in criminal matters.

I. General:- (a) He shall have an establishment of one Stenographer.

(b) He is debarred from:-

(i) advising or appearing for parties against Government;

(ii) giving advise to parties in cases in which he is likely to be called on to advise the Government;

...

(iii) accepting any position in any commercial concern.

c) The Government may delegate any or all of its powers under these rules to the Board.

The Government may be asked to create such an appointment

for the reasons given above, and to approve the rules.

x x x x
For Addl. Joint Secretary.

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STRICTLY CONFIDENTIAL.

REVENUE DEPARTMENT
Abstract.

Madras General Sales Tax Act, 1939 - Law Officers - Standing Counsel for Commercial Tax Acts - Employment - Proposals.

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Ref. T.No. 4051/47-2.(Confdl.).

Madras. Dated 1st September 1947.

From

K.K. Das, Esq., I.C.S.,
Additional Joint Secretary, Board of Revenue.

S. Ranganathan, Esq., I.C.S.,
Commissioner of Land Revenue and Commercial Taxes.

Ref:- Board's Reference No. T.4051/47_1 dated 9.8.1947.

Reference:-

In continuation of its reference cited above, the Board invites the attention of the Government to the recent judgment of Mr. Justice Chandrasekhara Iyer - Please see Board's Ref. T.No. 5795/47-1 dated 29.8.1947 and Board's D.O. No. T. 6533/47 dated 1.9.47. That judgment, which is the most disastrous of a series of decisions adverse to Government which have recently been pronounced, would never have been passed if the case had been properly represented by a qualified departmental lawyer. This recent experience has confirmed the view of the Board that the Public Prosecutor has little or no knowledge of the Madras General Sales Tax Act and connected Acts. The Board has therefore no confidence that the Public Prosecutor would be able to represent the Government properly in cases under the Madras General Sales Tax Act. Experience has also led to Board to believe that the Advocate-General, though he is better than the Public Prosecutor in this respect, as he is a civil lawyer, cannot be expected to handle case s under this Act in a completely satisfactory manner.

The Board therefore requests the Government to make the appointment of a legal adviser quaickly treating the matter as specially urgent.

x x x x
Addl. Joint Secretary.

To

The Secretary to Government, Revenue Department, Fort St. George, Madras.

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ANNEXURE II.

Proceedings of the Sub meeting to discuss the proposed

amendments to the Madras General Sales Tax Act (IX of 1939).

Present.

Hon'ble the Prime Minister.
Hon'ble the Minister for Finance.
Hon'ble the Minister for Agriculture.
Hon'ble the Minister for Education.
Mr. S. Ranganathan, I.C.S., Member, Board of Revenue.
Mr. K.K. Dass, I.C.S. , Additional Joint Secretary, Board of Revenue.
Mr. P.S. Viswanatha Ayyar, I.C.S., Joint Secretary to Government, Revenue Department.

Item (i):- Registration of dealers with a turnover of Rs. 7,500/- and above and the levy of a registration fee of Rs. 6/- per annum.

This was agreed to.

Item (2):- Taxation of agents of non-resident dealers.

Agreed to.

Item (3):- Taxation of Transfer of goods involved in the application of goods by contractors to the works.

Agreed to.

Item (4):- Fixation of differential rates ranging from 0-0-3 in the rupee to 0-2-0 so as to distinguish between necessities and luxuries and the abolition of slab rates.

The principle was agreed to. The proposals have to be examined in detail. The Board of Revenue was required to send a list of articles and the differential rates to be adopted, with detailed financial estimates.

Item (5):- Taxation of bullion at ¼ of 1%.

Agreed to.

Item (6)(a) - Cotton.:- Can be taxed when it leaves the ginning factory.

(b) Yarn:- When it leaves the spinning mills

(c) Hides and skins:- Can be taxed at single point on the sale value and not on the purchase price.

(d) Newspapers:- It was decided to have taxation at one point only.

Item (7):- Handloom cloth:- Exemption may be withdrawn as long as the present high prices and paucity of mill cloth prevail. The position can be reconsidered when mill cloth becomes freely available.

...

Item (8):- Repeal of section 8 of the Act relating to commission agents.

Agreed to.

Item (9):- Withdrawal of rebate under section 7 of the Act.

Agreed to.

Item (10):- Constitution of appellate Tribunal:- It was agreed that the present provisions might continue and that the question might be taken up later.

Item (11):- Taxation of first sales of certain kinds of agricultural and horticultural produce.

It was decided that Tea and Coffee should be specifically mentioned in the definition, and that no other produce need be included at present.

Item (12) - Consequential amendments:- Agreed to.

Item 13:- The question of ousting the jurisdiction of courts to question the validity of assessments by competent authority after due compliance with formalities was brought up by the Additional Joint Secretary, Board of Revenue. It was agreed that service of notice of assessment under Section 10 of the Act should be considered conclusive proof of the question of assessment and the liability of the person served with such notice and that courts should have no power to question such assessment.

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GOVERNMENT OF MADRAS.
Revenue Department.

Memorandum No. 79/N/47-4 dated 29.1.1948.

Sub:- Tax - Commercial Taxes Acts - Law Officers -- Standing Counsel - Employment - Proposal.

Ref:- From the Board of Revenue, Ref. T.No. 4051/47-1 dated 9.8.1947 and Reference T.No. 4051/47-2 (Confdl. dated 1.9.1947.

The Government consider that in view of the ɔcent amendments to the Madras General Sales Tax Act, 1939, ıere is not likely to be much litigation arising out of this Act. ıey also propose to take up the proposal for constituting an ɔellate Tribunal shortly. In view of this, the Board of Revenue ɜ requested to state whether it wishes to press its proposal for tne appointment of a standing counsel for Commercial Taxes or would prefer to wait and see for sanction as to how the amended Act works and then renew its proposals, if necessary.

x x x x x

To

The Board of Revenue.

REVENUE DEPARTMENT

Tax - Commercial Taxes Acts - Law Officers - Standing Counsel - Employment - Proposal.

Routine No. 1799.

Madras. Dated 24th March 1948.

From

Khan Saheb Muhammad Sultan Mohiuddin Hussain Saheb Bahadur,B.A.
Additional Joint Secretary, Board of Revenue, Madras.

W.R.S. Sattianathan, Esq., I.C.S.,
Commissioner of Land Revenue and Commercial Taxes.

Read:- Board's Ref. T.No. 4051/47-1 dated 9.8.1947.
Board's Ref. T.No. 4051/47-2 dated 1.9.1947.
Government Memorandum No. 79/N/47, Revenue, dated 29.1.1948.

Resolution:-

The Board agrees to wait and see for an year as to how the amended Act and the proposed Tribunal work and then to renew its proposal, for the employment of a Standing Counsel, if necessary. It however considers that some one well trained in Commercial Taxes law is necessary to represent the Government case before the proposed Tribunal and that, presumably, the Government Solicitor will have to appear before the Tribunal till more experience of the working of the new Act and the proposed Tribunal is gained.

x x x x
For Addl. Joint Secretary.

To

The Secretary to Government, Revenue Department.

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GOVERNMENT OF MADRAS.
Abstract.

Tax - The Madras General Sales Tax Act, 1939 - Law Officers - Standing Counsel for Commercial Taxes Acts - Employment - Proposal - Papers - Recorded.

REVENUE DEPARTMENT

G.O. Ms. No. 1025. Dated the 1st May 1948.

Read:-
From the Board of Revenue, T.No. 4051/47-1 dated 9.8.1947.
From the Board of Revenue, Ref. T.No. 4051/47-2 dated 1.9.1947.
Memorandum to the Board of Revenue, No. 79/N/47-4, Revenue, dated 29.1.1948.
From the Board of Revenue, Resolution (Routine) No. 1799 dated 24.3.1948.

Order:-
Recorded.

(By Order of His Excellency the Governor).

V.K. Rao,
Deputy Secretary to Govt.

P.T.O.

To

The Board of Revenue.

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/True copy/

R. Thiagaraja 24.1.54
Office Assistant,
Madras Record Office.

k.y.s.

REVENUE DEPARTMENT

Notes from page 2 ante may be perused.

2. This file relates to the Board's proposal for the appointment of a whole-time legal expert to advise the Government, the Board of Revenue and the District Officers in legal matters relating to the Commercial Taxes Acts. The main points urged by the Board in support of its proposal are that in recent months a number of suits have been filed against the Government in matters relating to the Madras General Sales Tax Act and that the Government Pleaders in the /to mufassil who attend/the work of defending these suits are neither experienced nor competent enough to deal with these suits which require knowledge in mercantile law. The Board apprehends that if the present procedure of entrusting the defence of these suits to the Government Pleader is continued there will be a considerable loss of revenue to Government due to adverse decisions in courts. The Board also thinks that the Advocate-General cannot be expected to handle cases under this Act in a completely satisfactory manner. While sympathising with the view point of the Board, this Department find it difficult to subscribe to the proposition that the Advoate-General cannot be expected to handle cases under the Sales Tax Act in a completely satisfactory manner. This Department consider that the adverse decisions of the court can be got over by suitably amending the Act. Home and Legal are against the Board's proposal. Attention is invited to their views at 'A' and 'B' on pages 3-4 above. Finance have also advised against the proposal and they consider that if there are loopholes in the Act the remedy obviously is to close them.

3. Suits under the Madras General Sales Tax Act mostly relate to the assessment of commission agents to Sales Tax and to the determination of the place of sale. Legislation is being undertaken to repeal section 8 of the General Sales Tax Act so as to make liable to tax, both the commission agent and the principal and also to amend the definition of the terms 'dealer', 'sale', 'turnover', etc. These amendments may, to a large extent, reduce the number of suits filed under this Act.

4. It was intended that the Board's proposal should be discussed at the Cabinet Sub Committee meeting on the 9th instant with the representatives of the Board of Revenue. As the concerned Departments had not yet been the file by then, the subject was not discussed at the meeting on the 9th, the subject was

Please add a copy of the minutes of the Sub Committee, noting further, if necessary and send soon to the concerned Departments.

5. In the circumstances explained in paras 2 and 3 above, it is for orders whether the Board's proposal will be pursued further. If so, it will be examined further in detail in consultation with Home, Legal and Finance.

6. The file may be circulated to Hon'ble Minister (Finance) and Hon'ble Minister (Home) for orders on para 5 above.

P.S.V.
16.9.

x x x x
13.9.

P.S.V.
16.9.

Joint Secretary's remarks at 'A' on page 5 above:- A copy of the proceedings of the Cabinet Sub Committee has been added at pages 7-8 c.f.

2. Attention is invited to item (13) on page 8 c.f.

Necessary provision has been made in the draft Bill for amending the General Sales Tax Act for ousting the jurisdiction of the court to question the validity of assessment by competent authority after due compliance with formalities. This provision together with the proposed deletion of section 8 relating to commission agents, will, to a large extent, close all the loopholes in the Act which have resulted in a number of suits being filed against the Government in courts. In these circumstances, there does not appear to be a real need for proceeding with the Board's proposal for the appointment of a legal expert separately for the Commercial Taxes.

3. Home, Legal and Finance may see for remarks before circulation.

x x x
22.9.47.

P.S.V.
24.9.

HOME DEPARTMENT

(Previous note of this Department on page 3 ante).

The notes of Legal, Finance and Revenue at pages 3-6 above may be perused. In view of the circumstances stated in para 2 of their note immediately above, this Department may agree with the views of Revenue at 'A' above. The case may be passed on to Legal.

C.S. David,
27.9.

Seen in Home.

O. Pulla Reddi,
27.9.

LEGAL DEPARTMENT

We may accept the view of Revenue at 'A' above (See our notes at pages 3-4 ante).

K.R.
29.9.47.

FINANCE DEPARTMENT

Finance may concur in the view of Revenue at 'A' on page 6 above.

V.K. Rao,
6.10.

REVENUE DEPARTMENT

The notes from page 4 ante may be read.

2. The file may be circulated to Hon'ble Minister (Finance) and Hon'ble Minister (Home) for orders whether the Board's proposal for the appointment of a legal expert separately for the commercial taxes, may be dropped.

x x x
8.10.

P.S.V.
10.10.

Hon'ble Minister (Finance).

We do not ~~except~~ (expect) much litigation hereafter. We can review the position in April 1948. May be dropped for the present.

B.G.R.
12.10.

H.M. (Home).

I think we ought to accept the Board's proposal. On every ~~taxation~~ measure there is bound to be litigation and I feel that as in the case of ~~income-tax~~ Government should have a competent legal adviser. The Board has made out a very good case for such an appointment and I would request my colleague to accept it. The cost will not be much and I feel such an adviser will be of immense value to us.

P.S.
15.10.

The file may be re-circulated to Hon'ble Minister (Finance) with reference to the minutes of Hon'ble Minister (Home) on page 7 ante.

x x x
17.10.

P.S.V.
17.10.

H.M. (Finance). We can consider after the bill becomes law. There is no urgency about it.

B.G.R.
20.10.

I should like to see when the case comes up again.

S.Y.K.
21.10.47.

Please see the orders in circulation.

2. The file may lie over till 1.12.1947.

x x x
30.10.

The file may lie over till 1.1.1948 by which time the Sales Tax Bill would have come into force.

x x x
2.12.47.

The notes from 'X' on page 4 ante and the orders in circulation on pages 7-8 ante may be perused.

2. The Madras General Sales Tax (Amendment) Bill, 1947 has since been passed into law and it has come into force with effect from 1.1.1948. The Amendment Act retains the provision regarding the exemption from tax in respect of commission agents but the section has been amplified so as to throw the burden of proof on the licensee and also to specify the various items of incidental expenditure which can be charged by the agent in addition to his commission. The rules prescribe the form in which a commission agent has to maintain accounts, and the conditions under which exemption will be granted have been set out in the form of licence. It is too early to say how far the amendments introduced by the Madras General Sales Tax (Amendment) Act, 1947 will lessen the chances of litigation arising out of the General Sales Tax Act.

The proposal to constitute an Appellate Tribunal for Sales Tax is proposed to be taken up after April 1948. If ultimately a Tribunal is set up, litigation in civil courts arising out of the sales tax is likely to diminish. It is for orders whether the Board may be asked to renew its proposal for the appointment of a Standing Counsel for Commercial Taxes, if necessary, after some experience is gained, of the working of the Amended Act. The file may be circulated to Hon'ble Minister (Finance) and Hon'ble Minister (Home) for orders.

x x x
15.1.

The jurisdiction of civil courts has been ousted, though the provision for excluding the jurisdiction of civil courts has been omitted, and the states quo retained. The words "tax due" have been altered to 'tax assessed' this removing one of the main plants of contention of the assessees i.e. failure to pay, taxes. The amending act has made the position clear as regards commission agents and agents of non-resident principals. There is also power taken to grant exemptions in cases of hardship. It is not likely therefore that much litigation will arise hereafter. The proposal of the Board for appointment of a Standing counsel for commercial taxes may be dropped and the Board may be asked to renew its proposal, if necessary, still exists five or six months later, viz., on 1.6.1948.

x x x
6.1.

I think the Board may be asked whether in view of the recent amendments to the Act, it wishes to press its proposal now or would prefer to wait and see how the amended Act works.

S.Y.K.
6.1.48.

H.M. (Finance) Board may be informed that the question of tribunal also will be taken up shortly.

B.G.R.
20.1.

H.M. (Home). I agree.

P.S. 21.1.

With reference to the orders in circulation a draft Memo. to the Board is submitted for approval.

x x x
28.1.

(Issued as Memo. No. 79/H/47-4 dated 29.1.48).
From the Board of Revenue, Board's Proceedings (Routine) No. 1799 dated 24.3.1948).

Please see the Board's reference at page 11 c.f.

2. The Board agrees to the suggestions at 'X' above and proposes to renew its proposal for the appointment of a law officer for the Commercial Taxes work, after one year, if necessary.

The Board presumes that in the Government Solicitor may have to appear before the Tribunal, till more experience is gained of the working of the new Act and of the proposed Tribunal. The functions of the Government Solicitor are mentioned in section V of the Annexure to G.O. No. 200, Home, dated 11.1.1941. The question of constituting an Appellate Tribunal for Commercial Taxes was ordered to be taken up on 1.4.1948 and the Board's proposals on this regard will be examined and submitted separately. If it is found necessary to require the Government Solicitor to appear on behalf of the Government before the proposed tribunal, he may perhaps be specifically authorised to do so. For the present the papers may be recorded. The draft order below is for approval. Home may see.

...

x x x
2.4.

V.K. Rao,
5.4.

HOME DEPARTMENT

(Previous notes of this Department on pages 3 and 6 above).

The file relates to the Board's proposal for the appointment of a whole-time legal expert to advise the Government, the Board of Revenue and the District Officers in legal matters relating to the Commercial Taxes Acts. The notes of Legal, Finance and Revenue Departments and the orders in circulation on pages 6-11 above may be perused. The Board of Revenue has agreed to wait and see for an year, as to how the amended Act and the proposed Tribunal work and then to renew the proposal, if necessary.

As regards the Board's request that the Government Solicitor will have to appear before the Tribunal till more experience of the working of the new Act and the proposed Tribunal is gained, the Revenue Department have stated that the question of constituting an Appellate Tribunal for Commercial Taxes is under separate consideration and that if it is found necessary to require the Government Solicitor to appear on behalf of the Government before the proposed tribunal, he may then perhaps be specially authorised to do so. This Department may agree with 'A' above.

The file may be returned to the Revenue Department.

C.S. David,
20.4.

O. Pulla Reddi,
23.4.

REVENUE DEPARTMENT

Please see the Home Department's notes above. They have agreed with this Department's views at 'M' on page 11 ante. As it will take time before final orders are passed on the question of constituting an Appellate Tribunal for Commercial Taxes, the papers may for the present, be recorded as ordered at 'X' on page 11 ante. The draft order below which has already been approved may issue.

A Call Book entry may be made against 1.10.1949.

x x x
28.4.

V.K. Rao,
30.4.1948.

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/True copy/

R. Thiagarajan 21-1-54
Office Assistant,
Madras Record Office.

k.y.s.

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11/1/54.